

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
TracFone Request for Waiver of Low-Income	)	
Program Tier One Support	)	
	)	
TracFone Request for Modification of Lifeline	)	
Customer Certification Condition	)	

**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”), pursuant to the public notices released on June 5, 2009, (DA 09-1271 and DA 09-1272), hereby submits its opposition to the petition for waiver filed by TracFone Wireless, Inc. (“TracFone”) on May 4, 2009, and its “Petition for Modification of Annual Verification Condition” filed on April 27, 2009, in the above-captioned proceeding. TracFone has failed to justify either petition, and both of these petitions should accordingly be denied.

TracFone has been unable to comply with federal eligible telecommunications carrier (ETC) regulations from the very start of its application process to gain ETC designation. In 2004, TracFone filed a petition for forbearance of the Commission’s rules to allow it to provide USF-supported services using only resold facilities,<sup>1</sup>

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<sup>1</sup> FCC rules require that entities seeking designation as an ETC agree (among other things) to provide high-cost and low income USF-supported services at least in part over their own facilities. *See* 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(d)(1).

submitted contemporaneously with its petitions for ETC designation in several states. TracFone subsequently amended its ETC designation petitions to limit its eligibility for federal universal service support to the Lifeline program only.

The Commission granted TracFone's petition for forbearance in 2005, subject to several conditions, including an obligation that TracFone obtain a certification from each public safety answering point (PSAP) where it provides Lifeline service confirming that TracFone provides its customers with access to basic and E911 service, and that it require each of its Lifeline customers to self-certify annually that the customer is the head of household and receives Lifeline-supported services only from TracFone.<sup>2</sup> In November 2008, TracFone filed a petition for modification of the PSAP certification requirement, which the Commission granted earlier this year.<sup>3</sup> In February 2009, TracFone filed a request for waiver of the Commission's rule requiring ETCs to notify their Lifeline or Link-Up customers about the digital TV (DTV) transition through bill notices or monthly stand-alone mailers and publicity campaigns;<sup>4</sup> this waiver request was granted in April 2009.<sup>5</sup>

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<sup>2</sup> *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 U.S.C. § 54.201(i)*, 20 FCC Rcd 15095, 15098-99 (2005) ("First TracFone Forbearance Order").

<sup>3</sup> *Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc.*, CC Docket No. 96-45, Order released March 5, 2009 (FCC 09-17). Rather than obtaining PSAP 911 and E911 certification, TracFone may self-certify that it meets the basic and E911 requirements if the PSAP does not provide the requested certification within 90 days.

<sup>4</sup> See 47 C.F.R. § 54.418.

<sup>5</sup> *TracFone Wireless, Inc. Request for Waiver of Section 54.418 of the Commission's Rules*, WC Docket No. 03-109; *DTV Consumer Education Initiative*, MB Docket No. 07-148; *Implementation of the DTV Delay Act*, MB Docket No. 09-17, Order released April 10, 2009 (DA 09-806).

The instant proceedings involve further requests from TracFone for dispensation from certain ETC rules or requirements. First, TracFone asks that its annual verification condition be modified. Rather than obtaining annual self-certification from each of its Lifeline customers that they are the head of household and receive Lifeline-supported services only from TracFone, TracFone asks that it instead be allowed to use a “statistically-valid sample of those customers.”<sup>6</sup> Second, it requests waiver of Section 54.403(a)(1) of the Commission’s rules so that TracFone can receive the maximum available Tier One Lifeline support of \$6.50 per month in all service areas, rather than the lesser support available in areas where the incumbent local exchange carrier assesses a subscriber line charge below \$6.50. Both of TracFone’s requests should be denied.

When the Commission issued the *First TracFone Forbearance Order* in 2005, it deliberately included the annual self-certification condition, and TracFone accepted this requirement as a condition for receiving Lifeline USF subsidies.<sup>7</sup> TracFone does not cite any change in circumstance which would warrant modification of this condition, or an inability to comply for reasons beyond its control. Instead, it argues that use of a statistically valid sample would be more convenient for TracFone (it would be able to “comply with the entirety of its annual verification obligations through a combined process”).<sup>8</sup> This does not constitute adequate justification for modification of a condition which it had previously accepted.

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<sup>6</sup> TracFone Petition for Modification, p. 3.

<sup>7</sup> According to USAC Form LI01, TracFone received \$4.82 million in low income USF support in three states (Florida, Tennessee and Virginia) in the second quarter of 2009. Its projected Lifeline support for the third quarter of 2009 is \$16.2 million (*id.*).

<sup>8</sup> TracFone Petition for Modification, p. 4.

TracFone similarly fails to justify its request for waiver of Section 54.403(a)(1) of the Rules. TracFone contends that because “there is no relationship between an ILEC’s SLC and the amounts that a non-ILEC ETC’s customer ... is charged for service,” the Commission should waive Section 54.403(a)(1) “as applied to TracFone.”<sup>9</sup> It complains that it provides Lifeline service in some states where the incumbent LEC charges a SLC lower than \$6.50, and that adherence with Section 54.403(a)(1) would reduce the amount of Lifeline benefits TracFone can provide to its subscribers (*id.*, p. 9).

Waiver of a rule requires that the petitioner demonstrate the special circumstances which would justify special treatment for it, and that deviation from the general rule is in the public interest.<sup>10</sup> TracFone’s waiver request fails on every count. First, TracFone is hardly in a unique position; every other non-incumbent LEC ETC is similarly situated. Thus, there are no special circumstances that would justify grant of a waiver. Second, grant of the requested waiver would be discriminatory and anti-competitive – it would give TracFone an unwarranted competitive advantage over other competitive ETCs by giving TracFone higher Lifeline support in certain areas than is available to other competitive ETCs. Third, grant of the waiver would place an additional burden on the USF, whose financial viability is already at risk,<sup>11</sup> with no apparent offsetting benefits -- TracFone has offered no evidence that grant of its requested waiver is necessary to

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<sup>9</sup> TracFone Petition for Waiver, p. 7.

<sup>10</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>11</sup> The universal service contribution factor reached a record high of 12.9% for the third quarter of 2009.

maintain, much less increase, Lifeline subscribership. TracFone's requested waiver is unjustified, and should accordingly be denied.

The Commission has repeatedly relaxed the standards for participation in the USF program to accommodate TracFone. While the goal of providing Lifeline support to residential customers in need is a worthy one, the integrity of the program should not be compromised to benefit a single service provider.

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**

*/s/ Charles W. McKee*

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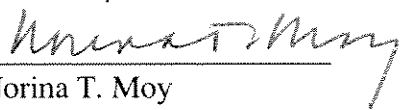
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July 6, 2009

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 6<sup>th</sup> day of July, 2009 to the parties listed below.

  
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